

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11048 OF 2021

PANDHARINATH ALIAS BHAUSAHEB BHIMRAO BALANDE
VERSUS
DNYANESHWAR KONDIBA CHANDRE

Mr.T.M.Venjane, Advocate for the petitioner.

(CORAM : BHARATI H. DANGRE, J.)

DATE : FEBRUARY 11, 2022

PER COURT :

1. Heard the learned Advocate Mr.Venjane for the petitioner.

The petitioner is the original plaintiff, who had filed RCS No.166/2008 against the defendant seeking perpetual injunction. The claim in this suit is based on the pleading that the plaintiff is the original owner and possessor of land Gat No.387 admeasuring 2 hectre 36R, situated at village Borgaon Arj, Tq.Phulambri, Dist.Aurangabad to the extent of 0.58 R, which he has purchased from one Dada Wagh by a registered sale deed. Pursuant to this sale deed, he was cultivating the suit land and the defendant obstructed his agricultural operation and threatened to dispossess him, which constrained him to file the suit, claiming injunction against the defendant as regards enjoyment of land located in Gat No.387 admeasuring 2 hectre 36R of village Borgaon to the extent of 0.58 R.

The defendant, on being summoned, appeared in the suit and resisted the claim by specifically denying that the plaintiff is the owner of land to the extent of 0.58R in Gat No.387. It was pleaded that the defendant's father namely Kondiba is carrying out the agricultural operation in land Gat No.387 to the extent of 0.45 R, since the land is in the name of his father. Dada Yashwant Balande was admitted to be the previous owner of 0.80 R land, but according to the defendant, the boundaries shown are not correct and towards the South side of 0.80 R land, is the land of Kondiba, the father of the defendant, which is conspicuously concealed by the plaintiff, is the pleading in the written statement.

The specific pleading of the defendant is to the effect that his father Kondiba filed an application for measurement of land at the hands of TILR and the measurement was carried out on 24/02/2004 and at that time, it was revealed that 0.20R land out of 0.45 R was in possession of Dada Baburao Wagh and on noticing this, he relinquished his possession over the encroached land and since then the father of the defendant is in possession of 0.45 R land. In the wake of the above, it is specifically pleaded that the attempt of the plaintiff is to deprive the defendant of their property and to grab 0.45 R portion thereof.

2. In the wake of the said pleadings, an application was moved for appointment of Court Commissioner i.e. the Taluka Inspector of Land Records for the purpose of measurement of the land.

3. The application was opposed by the defendant and rejected by the learned Judge by an order dated 23/07/2019. The reason cited by the learned Judge is to the effect that the plaintiff and the defendant are disputing the properties mentioned as a suit property, however, it is not the case that the defendant has encroached upon the land of the plaintiff, but both are claiming ownership and possession of the suit property.

In the wake of the above, the learned Judge, did not deem it fit to grant the application for appointment of court commissioner, which would be amounting to collecting evidence for the parties, and since the parties are expected to make good the pleadings made by them, and the application came to be rejected.

No legal infirmity is found in the impugned order and by upholding the same, the writ petition is dismissed.

(BHARATI H. DANGRE, J.)